

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 9TH NOVEMBER 2006 / 18TH KARTHIKA 1928

WP(C).No. 22568 of 2006(J)

PETITIONER:

SMT.SATHYABHAMA AMMA,
SWAYAM PRAKASH, DARSAN NAGAR, LANE-2,
DOOR NO.229, KUDAPPANAKKUNNU P.O.,
THIRUVANANTHAPURAM, (RTD.H.S.A. OF LEKSHMIVILASAM
H.S.POTHENCODE).

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

STATE OF KERALA, REP. BY SECRETARY
TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09/11/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

EXT.P1: TRUE COPY OF GOVT. ORDER DT. 13/11/1998.

EXT.P2: TRUE COPY OF DO. DT. 3/4/99.

EXT.P3: TRUE COPY OF TOVT. ORDERS

EXT.P4: TRUE COPY OF APPLICATION DT. 29/10/2000 BY PETR.

EXT.P5: TRUE COPY FO ORDER DT. 17/5/02.

EXT.P6: TRUE COPY OF ORDER OF LOKAYUKTA DT. 22/6/06.

EXT.P7: TRUE COPY OF RELEVANT PAGES OF SERVICE BOOK.

W.P(C) No. 22568 of 2006

Dated this the 9th day of November, 2006.

J U D G M E N T

Petitioner is a retired High School Assistant. Though the petitioner got appointment against a substantive vacancy as a trained Language Teacher only with effect from August 3, 1970, she had certain broken spells of untrained service to her credit prior to the said regular appointment. It is contended by the petitioner that she was initially appointed as a High School Assistant with effect from July 4, 1965 till March 31, 1966. She had another spell of service from July 14, 1966 till March 31, 1967. Yet again, she was appointed against a short term vacancy with effect from June 12, 1967 till March 29, 1968. It is admitted by the petitioner that at the time of commencement of her service, she was not a qualified trained teacher but subsequently she underwent Language Teachers' Training Course from June 27, 1968 till March 31, 1969, and thus became a trained teacher.

2. The short question that arises for consideration in this writ petition is whether the petitioner would get the benefit of Exts.P1 and P2 orders issued by the Government. In Ext.P1 dated November 13, 1988, the Government ordered that the period of trained as well as untrained service of teachers including Language teachers who were appointed upto March 31, 1967 would be reckoned for higher/senior/selection grades, subject to the condition that "the break before and after training shall not exceed 8 months". It was further clarified that in the case of those teachers including Language Teachers, who were appointed upto March 31, 1967 and

who would not come under the purview of the Government orders issued earlier, and whose break in service before and after training exceeded 8 months, all spells of approved untrained service (excluding training period) would be reckoned for granting higher/senior/selection grades notionally. But the monetary benefits consequent to the above order were ordered to be paid only from the date of that order.

3. Later, on April 3, 1999 Government issued Ext.P2 order clarifying that the 2 categories of teachers referred to above would be eligible for monetary benefits also, retrospectively.

4. Though the petitioner submitted Ext.P4 representation before the Government to grant her the benefits in terms of Exts.P1 and P2 orders referred to above, it was rejected by the Government by Ext.P5 order on the ground that those orders pertain to those teachers who were appointed in regular service upto March 31, 1967 only. In other words, the Government took the view that since the petitioner was appointed in regular service only with effect from August 3, 1970, she would not come within the purview of Exts.P1 and P2 orders.

5. A perusal of Exts.P1 and P2 orders of the Government undoubtedly shows that they relate to qualified teachers who were appointed against a regular vacancy on or before March 31, 1967. Admittedly petitioner became a qualified teacher only in 1969. Though the petitioner has not stated the date on which she passed the Language Teachers' Training Course Examination, it is conceded by her that she had undergone the training for the above course from June 27, 1969 to March 31, 1969. Presumably she might have passed the

examination thereafter. It is also admitted by the petitioner that she got appointment after passing the qualifying examination against a substantive vacancy only on August 3, 1970. Exts.P1 and P2 orders were issued by the Government to give the benefit of “periods of untrained service and training period in respect of those teachers appointed upto March 31, 1967 for sanctioning higher grades”. Initially the said benefit was confined to only those candidates in whose cases the broken service before and after training did not exceed 8 months. But it was noticed by the Government that there was no provision in the existing orders to count the untrained service for granting higher grades. It was in the above circumstances that the Government had issued Ext.P1 order. In the said order the Government clarified that “the period of training as well as untrained service in respect of teachers including Language Teachers who were appointed upto 31/3/1967 will be reckoned for higher/senior/selection grades subject to the condition that the break before and after training shall not exceed 8 months”. Clause 2(ii) is extracted hereunder:

“(ii) In the case of those teachers including language teachers who were appointed upto 31/3/1967 and who will not come under the purview of the Government Orders read above, and whose break in service before and after training exceeds eight months, all spells of approved untrained service (excluding training period) will be reckoned for granting higher/senior/selection grades notionally. They will be eligible for monetary

benefits from the date of this order.”

It is admitted by the petitioner that in her case the break in service before and after training had exceeded 8 months. But still, according to her, she was entitled to get the benefit of higher grade going by clause 2(ii) extracted above, since all spells of her untrained service had been approved. Ext.P7, extract from the service book of the petitioner, has been produced in support of the above contention. It is further contended by the petitioner that in Ext.P2 order the Government had later clarified, in supersession of Ext.P1 order, that the untrained period of service and the training period, even if the break in service before and after training exceeded 8 months, would be reckoned for higher grade.

6. However a perusal of Ext.P5 order reveals that the Government had not adverted to any of the above relevant aspects while passing the said order. As noticed earlier, petitioner's spells of untrained service are seen to have been approved as revealed from Ext.P7. It is true that petitioner passed the qualifying examination only in 1969 after the last spell of her untrained period of service. But still petitioner had had the benefit of approved untrained service to her credit before the crucial date viz., March 31, 1967. Petitioner got appointment against a substantive vacancy only with effect from August 3, 1970. However Exts.P1 and P2 do not indicate that the appointment envisaged in the said orders ought to have been against a substantive vacancy. In the above facts and circumstances I am of the view that the

entire matter has to be reconsidered by the Government in the light of the observations made above. I make it clear that the earlier orders issued by the Government on the subject and which are seen mentioned in Exts.P1 and P2 have not been made available for perusal. The Government shall pass fresh orders keeping in view all the relevant orders on the subject.

7. It is true that Ext.P5 order was passed on May 17, 2002. Petitioner had challenged the above order before the Kerala Lok Ayukta only in 2005. The complained filed by the petitioner was disposed of by the Lok Ayuktha by Ext.P6 order. Immediately thereafter petitioner had preferred this writ petition praying for a direction to give her the benefit of Ext.P2 order.

8. Having regard to the peculiar facts and circumstances of the above case I am satisfied that Ext.P5 is liable to be set aside. I do so. The Government shall reconsider the matter and pass appropriate fresh orders in the light of the observations made above. I hasten to add that I have not considered the merit of the contentions raised by the petitioner. It will be open to the Government to take a fresh decision strictly on the merit of the case and in accordance with law. Respondent shall ensure that petitioner is afforded sufficient opportunity to be heard.

Writ Petition is disposed of in the above terms.

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**A.K. Basheer
Judge.**